

REMARKS

In the Office Action, claims 1-7 were allowed, and claims 8-20 were rejected. Reconsideration and allowance of all pending claims are requested.

Rejections Under 35 U.S.C. § 102

The Office Action summarizes claims 8, 11-13 and 19 as rejected under 35 U.S.C. § 102(b) as being anticipated by Scott (U.S. Patent 5,959,980; hereinafter “Scott ‘980”). The Office Action further summarizes claims 14-16 as rejected under 35 U.S.C. § 102(e) as being anticipated by Scott (U.S. Patent 6,141,373; hereinafter “Scott ‘373”).

Applicants respectfully submit that the Examiner has incorrectly interpreted the transmitter recited in claim 8 as a passive unit for transmitting signals. The transmitter recited in claim 8 of the present application, in fact represents a transmission unit that is *configured* to generate a colored noise-like preamble. A transmission unit configured to generate a colored noise-like preamble cannot be equated to a passive unit such as a transmitter, as such interpretation is simply inconsistent with the claim. Applicants submit that the “configured” transmitter of the claims corresponds, for example, to the ISM transmission unit described in the application.

Applicants certainly appreciate the difficulty faced by the Examiner in interpreting the claims in view of the specification without improperly importing limitations from the specification into the claims. However, Applicants respectfully note that the Federal Circuit, sitting *en banc*, recently provided a summary and additional guidance regarding the proper interpretation of claims in view of the specification. *See Phillips v. AWH Corp.*, No. 03-1269, -1286 (Fed. Cir. 2005). In *Phillips*, the Federal Circuit again emphasized the primacy of the specification and intrinsic evidence in claim interpretation. Particularly, the Phillips court noted that the specification “is always highly relevant to the claim construction analysis. Usually, it is dispositive; *it is the single best guide to the meaning of a disputed term.*” *Phillips*, slip op. at 13 (quoting *Vitronics Corp. v.*

Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)) (emphasis added). Moreover, the court also noted that:

Ultimately, the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language *and most naturally aligns with the patent's description of the invention* will be, in the end, the correct construction.

Phillips, slip op. at 15 (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)) (emphasis added).

In view of this binding legal precedent, Applicants respectfully submit that the claim interpretation provided in the Office Action mailed March 7, 2006, fails to conform with the binding precedent set forth by the Federal Circuit, such as in *Phillips*, *Vitronics*, and *Renishaw*, and extends beyond the reasonable interpretation that would be afforded the claims by one skilled in the art in view of the specification. Particularly, Applicants respectfully note that the Examiner, contrary to this binding precedent, appears to have interpreted "transmitter" in a manner that is inconsistent with the specification. The only element that is "*configured*" to transmit a special preamble as claimed is the ISM transmission unit. The ISM transmission unit includes a wideband noise source, a colored noise-like preamble signal generator and a modulator, which generate the colored noise-like preamble, which is then transmitted by the transmitter and antenna. *See*, FIG.1, and page 4, lines 1-28. All of these components are part of this ISM transmission unit.

Applicants respectfully submit that Scott '980 and Scott '373 fail to disclose a transmitter or any other component or collection of components configured to generate and then transmit a colored noise-like preamble as recited in independent claims 8, 14 and 19. Nowhere do the references suggest that the transmitter is capable of generating the colored noise-like preamble. The references certainly do not disclose that the

transmitter or any other component is *configured* to generate a colored noise-like preamble as recited in independent claims 8, 14 and 19.

Accordingly, Applicants respectfully submit that independent claims 8, 14 and 19, and claims depending therefrom are allowable and respectfully request the Examiner to withdraw the rejection of the claims.

Rejections Under 35 U.S.C. § 103

Claims 9 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott '980 in view of Keen (U.S. Patent 4,388,723). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott '980 in view of Bunch et al. (U.S. Patent 4,121,216). Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott '373 in view of Scott '980.

The claims rejected under this section all depend directly or indirectly from independent claims 8 and 14 discussed above. Consequently, all of the dependent claims are believed to be patentable both by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Reconsideration and allowance of all of the dependent claims on this basis are requested.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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